MOHAMAD SAZALI KAMILAN A

v.

NURUL IZZAH ANWAR & ORS

HIGH COURT MALAYA, KUALA LUMPUR B
ZABARIAH MOHD YUSOF J
[ELECTION PETITION NO: 26PP-3-2013]
1 AUGUST 2013

ELECTION: *Petition - Defective petition - Application to strike out election petition - Whether jurisdiction of court to hear election petition invoked - Election laws - Whether provisions of election laws complied with - Advance election date - Whether failure to state advance election date fatal - Election Petition Rules 1954, rr. 9, 34* C

ELECTION: *Petition - Service of petition - Mode of service of petition - Restrictions on particular mode of service of petition prescribed under Election Petition Rules 1954 - Whether provisions with regards to service of petition mandatory in nature - Whether petition ought to be dismissed for failure to observe provisions regarding service of petition - Election Petition Rules 1954, rr. 3(2), 15(1)* D E

ELECTION: *Petition - Presentation of petition - Time limit to present petition - Whether petition presented within 28 days - Intention of Legislature - Whether compliance to s. 38(1)(a) of Election Offences Act 1954 mandatory* F

ELECTION: *Petition - Failure to plead - Facts to support petition - Whether facts pleaded sufficient - Whether failure to plead adequate facts rendered petition defective - Election Petition Rules 1954, r. 4(1)(b), (4) - Whether petitioner had reasonable cause of action - Whether petition frivolous, vexatious and abuse of process* G

This was the first respondent's application *vide* encl. 14 raising preliminary objections to strike out the election petition dated 11 June 2013. The first respondent had raised various grounds, *inter alia:* (i) that the petition was not filed by the petitioner or his advocates under rr. 9 and 34 of the Election Petition Rules 1954 ('EPR'); (ii) the petitioner failed to comply with rr. 3(2), 15(1), and 15(1)(a) of the EPR; (iii) the petitioner had failed to comply with the requirements of s. 38(1)(a) of the Election Offences Act 1954 ('EOA') for not presenting the petition within H I

A the stipulated time limit of 28 days; (iv) the petitioner failed to comply with r. 4(1)(b) and (4) of the EPR as he had failed to state the advance voting date and for not stating adequate facts to support the allegations and charges against the respondents; (v) non-compliance with r. 4(2) of the EPR; (vi) the petition
B pleaded a relief which had been repealed under s. 35 of EOA; and (viii) no reasonable cause of action and that the petition was frivolous, vexatious and an abuse of process.

Held (allowing application in encl. 14 with costs; striking out
C **petition):**

(1) The election petition was filed not by the appointed advocates for the petitioner but a firm of solicitors which was not the firm appointed under rr. 9 and 34 of the EPR, and neither was the firm capable of being appointed under the EPR. All
D other documents filed in the court were also not filed by the named advocates but a firm of advocates which was a stranger to the whole petition and these proceedings. Hence, the election petition was liable to be struck out. (paras 16-18)

E **(2)** The petitioner had indeed left two copies of the election petition at the registry during the presentation of the election petition. Therefore, the petitioner had complied with r. 3(2) of the EPR and hence, this was a non-issue. (paras 26 & 27)

F **(3)** The fact that the petitioner sought to execute service by the third mode provided under r. 15(1) of the EPR initially and subsequently decided to effect service by the first mode, did not invalidate the service of the election petition. The choice was entirely up to the petitioner as to which mode he wished
G to effect service as the EPR does not restrict as to any particular mode. What was important was that the respondents had been served with the petition by either one of the modes as stipulated in r. 15(1) of the EPR. Hence, the preliminary objection on the issue that the first mode of
H service ought to be exhausted first before engaging the second and third mode was without merits and was thus, dismissed. (paras 40-43)

I

(4) The process server who served the petition was not the process server of the firm of advocates duly authorised by the petitioner and thus, fell far short of the requirement of r. 15 of the EPR. Hence, the service of the petition ran foul of r. 15(1)(a) of the EPR. Since the provisions with regards to service of the petition is mandatory and must be strictly observed with, the failure rendered the petition being dismissed. (paras 48-50)

(5) The requirement of compliance to s. 38(1)(a) of EOA is mandatory, failing which would result in the petition being struck off. Clearly, in this case, the petitioner had failed to comply with s. 38(1) of the EOA. (para 62)

(6) There was no confusion caused by the failure to state the date of the advance election date. It was undisputed that the election date was 5 May 2013 and it was definitely not an advance election date. Failure to state the advance election date was not fatal and did not cause confusion to the first respondent in preparing her defence. (paras 73-75)

(7) The formulation of the heading of the first charge, in which the petitioner was unsure whether the allegation was corrupt practice or illegal practice by the usage of the words "dan/atau" led to ambiguity in the charge and would certainly cause confusion to the fist respondent in formulation of her defence. There were also no facts or particulars pleaded in the petition which supported the offence of illegal practice committed by the first respondent. The petition also failed to plead sufficient facts and elements of undue influence with clarity. As a result of the mixing and conjoining of the offences, the petitioner had failed to state the specific offence in the first charge which constituted non-compliance of r. 4(1)(b) of the EPR. Further, the usage of the word "atau" rendered the charge bad for duplicity. (paras 85-87, 90, 98 & 100)

(8) The only relief permitted under the EOA is provided under s. 35 and the election petition judge could no longer declare another candidate to be the winner of the seat. (paras 150-153)

(9) Election petitions are such that it relies heavily on election laws. The petitioner failed to plead sufficient facts to support the alleged contravention of the provisions of the Elections (Conduct of Elections) Regulations 1981, EOA or of the

A alleged corrupt practice. Therefore the petitioner had failed to plead material facts to show that there was a cause of action against the first respondent. (paras 154 & 155)

Case(s) referred to:

B *Ahmad Jamaluddin Abd Majid v. Rafidah Aziz & Ors [2009] 2 CLJ 785 FC* ***(refd)***

Alexander Vincent v. Adeh Denong @ Gabriel Adit Demong [2006] 1 LNS 173 HC ***(refd)***

Dayrell Walter Entrie v. Datuk Patinggi Tan Sri Alfred Jabu Numpang [2007] 7 CLJ 11 HC ***(refd)***

C *Devan Nair v. Yong Kuan Teik [1967] 1 LNS 37 PC* ***(refd)***

Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 2) [2000] 3 CLJ 532 HC ***(refd)***

Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26 Bangi & Ors and Other Petitions [2005] 5 CLJ 349 HC ***(refd)***

D *Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC* ***(refd)***

Hugh Siak Meng & Anor v. Daing Ibrahim [1975] 4 MLJ 275 ***(refd)***

Isahak Hamid v. Mustapha [1965] 1 LNS 63 HC ***(refd)***

Kua Kia Soong lwn. Mohd Nor Bador & Anor [1996] 1 CLJ 429 HC ***(refd)***

Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors [2009]

E *4 CLJ 488 FC* ***(refd)***

Mohd Zahid Ibrahim v. P Kamalanathan P Panchanathan & Ors [2010] 8 CLJ 608 HC ***(refd)***

Muip Tabib v. Dato James Wong; Wan Hamid Tuanku Surur v. Francis Loke [1970] 1 LNS 83 HC ***(refd)***

F *Rahim Khan v. Khurshid Ahmad [1974] MLB (Ind) 138* ***(refd)***

Ramely Mansor v. Suruhanjaya Pilihanraya Malaysia & Ors [2000] 6 CLJ 56 HC ***(refd)***

Tengku Korish v. Mohamed Jusoh & Anor and Abdul Raouf v. Ibrahim Arshad & Anor and Mokhtar Abdullah v. Mokhtar Haji Daud & Anor [1969] 1 LNS 189 HC ***(refd)***

G *Zulkarnaini Mohamed Noor v. Syed Omar Mohamed & Anor [1978] 1 LNS 245 HC* ***(refd)***

Legislation referred to:

Election Offences Act 1954, ss. 9(1), 11(1)(b), (d), 32(b), (c), 35, 38(1)(a), (b)(i)

H Election Petition Rules 1954, rr. 3(2), 4(1)(b), (2), (4), 9, 15(1)(a), (c), 34(2)

Reported by Thirunavakarasu Vijayan

I

JUDGMENT

Zabariah Mohd Yusof J:

Grounds On Preliminary Objections By The First Respondent

Jurisdiction Of An Election Court

[1] The law governing an election court and an election judge in hearing election petitions is a special jurisdiction unknown to common law and equity.

(i) *Tengku Korish v. Mohamed Jusoh & Anor and Abdul Raouf v. Ibrahim Arshad & Anor and Mokhtar Abdullah v. Mokhtar Haji Daud & Anor* [1969] 1 LNS 189; [1970] 1 MLJ 6 at pp. 6 and 7.

[2] This special power/jurisdiction of an election court was further acknowledged in:

(i) *Hugh Siak Meng & Anor v. Daing Ibrahim* [1975] 4 MLJ 275 at pp. 276 and 278.

[3] This jurisdiction regarding election is a creature of statute, and as such should be exercised in accordance with the law which creates it. In addition, as the jurisdiction is a civil right but a creature of statute so it must also be subjected to the limitations imposed by it.

(i) *Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors* [2009] 4 CLJ 488; [2009] 5 MLJ 153 at pp. 162 and 163; and

(ii) *Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 2)* [2000] 3 CLJ 532; [2000] 3 MLJ 218 at p. 230.

Provisions Of Election Laws Are Mandatory

[4] Many authorities have quoted the need for strict/mandatory adherence to the election laws.

[5] This proposition was propounded in the Privy Council judgment in *Devan Nair v. Yong Kuan Teik* [1967] 1 LNS 37; [1967] 1 MLJ 261 (Tab 5 BOA). Rationale for such strict implementation of the election laws is because it would be in the public interest for a speedy determination of the matter.

[6] The principle laid down in the case of *Devan Nair* was subsequently followed in several notable local cases such as:

(i) *Hugh Siak Meng & Anor v. Daing Ibrahim* [1975] 4 MLJ 275 at pp. 276 and 278; and

(ii) *Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 2)* [2000] 3 CLJ 532; [2000] 3 MLJ 218 at p. 230.

[7] Failure to comply with the mandatory provisions of election laws will render the petition defective and liable to be struck out by the court.

(i) *Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors* [2009] 4 CLJ 488; [2009] 5 MLJ 153 at pp. 162 and 163.

Powers Of The Court To Deal With Preliminary Objections

[8] As the provisions of election laws are mandatory, the election judge has the power to consider preliminary objections premised on failure of the petitioner to observe the said provisions.

[9] An election judge has an inherent power to clean his list of defective petitions due to their non-compliance to the provisions of the election laws.

(i) *Devan Nair v. Yong Kuan Teik* [1967] 1 LNS 37; [1967] 1 MLJ 261 (Tab 5 BOA); and

(ii) *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729 at p. 743 (Tab 6 BOA).

Ground For Avoiding The Election

[10] The petitioner grounded his petition on four charges ie, two charges on s. 32(b) and two charges on s. 32(c) of the Election Offences Act 1954.

[11] There are two limbs under s. 32(b) which are to be read conjunctively ie, firstly, non-compliance of any written law and secondly, such non-compliance affected the result of the election.

The need to fulfil both ("twin requirements") limbs was enumerated in the case of *Gan Joon Zin* and *Ahmad Jamaluddin Abd Majid v. Rafidah Aziz & Ors* [2009] 2 CLJ 785; [2009] 2 MLJ 646.

[12] The petitioner herein withdraws the petition against the second and the third respondents. As a result the petition against the second and the third respondents was struck off with an agreed costs of RM5,000.

[13] The first respondent *vide* notice of application in encl. 14 dated 9 July 2013 raises ten grounds as preliminary objections, to strike out the election petition dated 11 June 2013.

The Grounds For The Preliminary Objections

Ground 1: The Election Petition Was Not Filed By The Petitioner Or His Advocates Under rr. 9 and 34 Of The Election Petition Rules 1954 ('EPR')

[14] Rules 9 and 34 of the EPR are to be strictly adhered to when dealing with election petition.

(i) *Wilfred Nissom v. Datuk Stephen Yong & Anor; Mohamad Shamsuddin Moktar v. Chong Kim Mook & Anor (Unreported)*; and

(ii) *Dayrell Walter Entrie v. Datuk Patinggi Tan Sri Alfred Jabu Numpang* [2007] 7 CLJ 11; [2007] 1 MLJ 651.

[15] In the present case the petitioner filed under rr. 9 and 34 of the EPR notices appointing his named advocates.

[16] However the election petition was filed not by the appointed advocates for the petitioner but by a firm of solicitors, Messrs Raja Riza & Associates, which was not the firm appointed under rr. 9 and 34 of the EPR, and neither is the firm capable of being appointed under the EPR.

[17] All other documents filed in court was not filed by the named advocates but by a firm of advocates, which is a stranger to the whole petition and these proceedings. Messrs Raja Riza & Associates does not have lawful authority to file the election petition under the EPR for and on behalf of the petitioner.

[18] The jurisdiction of the court had not been invoked and hence the election petition is liable to be struck out based on this ground alone.

Ground 2: The Petitioner Failed To Comply With r. 3(2) EPR

[19] Rule 3 of the EPR provides for the manner of presentation of the election petition ie, by delivering it at the office of the Registrar of the High Court.

[20] Rule 3(2) of the EPR provides that there shall be left with the petition two copies thereof.

[21] It was held in the case of *Ramely Mansor v. Suruhanjaya Pilihanraya Malaysia & Ors* [2000] 6 CLJ 56; [2000] 2 MLJ 550 that "the language of r. 3(2) of the EPR imposes a statutory obligation on the petitioner to leave two copies of the petition with the court". In that case the court struck out the petition due to the failure to comply with r. 3(2) of the same.

[22] There are a plethora of cases which support this proposition with regards to the mandatory compliance of r. 3(2) as enunciated in *Ramely Mansor v. Suruhanjaya Pilihanraya Malaysia & Ors*.

[23] Failure to comply with such mandatory requirement is fatal which renders the petition defective.

[24] It was averred by the first respondent in his affidavit in para. 5 of encl. 15 and para 7.1 of encl. 16, that an enquiry made at the Registry of the High Court shows that the petitioner had not left two copies of the election petition at the Registry during the presentation of the petition election on 11 June 2013 as required under r. 3(2) of the EPR.

[25] The petitioner's advocate in his affidavit in reply states that on 11 June 2013 he filed and served two copies of the election petition at the Registry during the presentation of the election petition.

[26] A check of the courts file revealed the petitioner had indeed left two copies of the election petition at the Registry during the presentation of the petition election.

[27] Therefore the petitioner had complied with r. 3(2) of the EPR and hence this is a non-issue.

Ground 3: Whether The Petitioner Failed To Comply With r. 15(1)(c) Of The EPR

[28] Rule 15(1) of the EPR states that notice of the petition and copy of the petition shall be served by the petitioner.

[29] Service is a condition precedent to the jurisdiction of the election court.

[30] In *Dayrell Walter Entrie* the court held that provisions regarding service of an election petition are mandatory, and not strictly complying to the procedures required by r. 15 of the EPR, will nullify the petition.

[31] The court in the case of *Dayrell Walter Entrie* held that:

> The consequence of the petition's failure thereof means that the jurisdiction of the election court is not invoked since the provisions regarding service of an election are mandatory, not merely directory and must be strictly observed with; and failure to comply would result in the election petition being dismissed.

[32] The first respondent submitted that r. 15(1) of the EPR stipulates three modes of service. Between the first mode and the second mode there is a semicolon. There is however the word "or" between the second mode of service and the third mode.

[33] The first respondent submitted that the first mode of service ie, personal service should be exhausted first before the other two modes are employed by the petitioner.

[34] In the present case on 19 June 2013 the petitioner utilised the third mode of service under r. 15(1)(c) of the EPR. Hence, the petitioner sought to post on the notice board of the High Court pursuant to r. 15(1)(c).

[35] Subsequently, on 20 June 2013 the process server of Messrs Raja Riza & Associates served personally the petition and the notice of presentation of the election petition dated 11 June 2013 (encl. 2) on the first respondent pursuant to r. 15(1) of the EPR.

[36] The first respondent referred to the speeches of Datuk Seri Utama Dr Rais Yatim which is contained in the Hansard of Parliament dated 9 September 2002 to support his contention.

[37] I disagree with the submission of the first respondent in this respect.

[38] Firstly, one does not refer to the speeches of Ministers in the Hansard of Parliament to construe the legal provision of any law.

[39] Secondly, as far as the issue of service of the petition is concerned, I am of the view that the petition had been effectively served on the/respondents *via* personal service, which is regular. This is apart from the issue that the petition was served by the process server of Messrs Raja Riza & Associates, which will be addressed in the next ground of preliminary objection.

[40] The fact that the petitioner sought to execute service by the third mode initially and later on decide to effect service by the first mode does not invalidate the service of the election petition. The choice is entirely up to the petitioner as to which mode he wish to effect service as the EPR do not restrict as to any particular mode.

[41] In the case of *Mohd Zahid Ibrahim v. P Kamalanathan P Panchanathan & Ors* [2010] 8 CLJ 608 at p. 617 it was stated in the judgment of the said case that:

> It must be noted that the EPR is not entirely clear as to whether the service must be done by one mode of service only. The petitioner is therefore entitled to use one or more modes provided under the EPR to effect service on the 1st Respondent.

[42] What is important is that the respondents have been served with the petition by either one of the modes as stipulated in r. 15(1) of the EPR.

[43] Hence this preliminary objection on the issue that the first mode of service ought to be exhausted first before engaging the second and the third mode is without merits and is dismissed.

Ground 4: The Petitioner Failed To Comply With r. 15(1)(a) of the EPR

[44] It was submitted by the first respondent that notice of the petition and copy of the petition is to be served on the respondent personally which shall be effected by delivering the notice and copy thereof to the respondent.

[45] The case of *Wilfred Nissom* held that the presentation of the petition shall not be done by a stranger. The judge also extended such limitation to r. 15 of the EPR. It was held as follows:

> In dealing with ground No. 1 ... a petition must be presented by the petitioner himself or by an advocate duly authorized by him. The same, ... applies to the service of the service of the notice required under r. 15. There is therefore a failure to comply with the provisions of r. 15.

[46] In this respect, so long as the petition is presented by the petitioner or an advocate duly authorised by him, that would suffice.

[47] That would include process server which is engaged by the firm of the advocate duly authorised by the petitioner.

[48] However, in the present case, the petition was served by the process server of Messrs Raja Riza & Associates. The said process server, Mohd Jeffrey bin Wakhid is not the process server of the firm of advocates duly authorised by the petitioner. This process server certainly fall far short of the requirement of r. 15 of the EPR.

[49] Hence the service of the petition runs foul of r. 15(1)(a) of the EPR.

[50] Therefore the jurisdiction of the court is not properly invoked, since the provisions with regards to service of the petition is mandatory and must be strictly observed with, failure in which renders the petition being dismissed.

Ground 5: Whether The Petitioner Failed To Comply With The Requirements Of s. 38(1)(a) Of The Election Offences Act 1954 ('EOA') By Failing To Present The Election Petition Within The Stipulated Time Limit Of 28 Days After The Date Of The Alleged Act

[51] The first charge and the second charge alleged by the petitioner against the first respondent is that of corrupt practice/ illegal practice.

[52] Paragraph 3 of the election petition states:

> Responden Pertama telah melakukan perbuatan-perbuatan rasuah dan/atau perbuatan-perbuatan yang menyalahi undang-undang (Seksyen 32(c) Akta Kesalahan Pilihanraya 1954.
>
> I. PERBUATAN RASUAH PENGARUH TIDAK WAJAR OLEH RESPONDEN PERTAMA BERTENTANGAN DENGAN SEKSYEN 9(1) DAN 11(1) AKTA KESALAHAN PILIHAN RAYA 1954.
>
> Fakta-Fakta
>
> 3. Pempetisyen kamu menyatakan bahawa Responden Pertama telah dengan sendiri PADA ATAU SEKITAR 4.5.2013, telah mengenakan kerosakan ke atas calon BN, Raja Nong Chik bin Raja Zainal Abidin dan menganggu secara langsung atau tidak langsung ...
>
> Butir-Butir
>
> i) Responden Pertama telah pada 4.5.2013 iaitu sehari sebelum Hari mengundi telah dengan sendiri dan di dalam pengetahuannya memberikan dan menerbitkan kenyataan palsu ...
>
> ii) ...
>
> iii) Responden Pertama telah pada 4.5.2013 memaklumkan berhubung sidang media yang diadakan berhubung kenyataan Responden Pertama tersebut ...

[53] Paragraph 5 of the election petition states:

> Responden Pertama telah melakukan satu perbuatan rasuah dan/ atau perbuatan-perbuatan yang menyalahi undang-undang (seksyen 32(c) Akta Kesalahan Pilihan Raya 1954.

II. PERBUATAN RASUAH OLEH RESPONDEN PERTAMA BERTENTANGAN DENGAN SEKSYEN 11(1) AKTA KESALAHAN PILIHAN RAYA 1954.

Fakta-Fakta

5. Pempetisyen kamu menyatakan bahawa Responden Pertama telah dengan sendiri pada atau sekitar 4.5.2013, membuat dan/atau menerbitkan kenyataan palsu bertajuk ...

Butir-Butir

i) Responden Pertama telah pada 4.5.2013 iaitu sehari sebelum Hari mengundi telah dengan sendiri dan di dalam pengetahuannya membuat dan menerbitkan kenyataan palsu bertajuk ...

ii) ...

iii) Responden Pertama telah pada 4.5.2013 memaklumkan berhubung sidang media yang di adakan berhubung Kenyataan Responden Pertama tersebut melalui laman sesawangnya, ...

[54] Paragraphs 3, 3(i), 3(iii), 5, 5(i) and 5(iii) of the election petition states that the alleged act of corrupt practice/illegal practice was committed on or around 4 May 2013.

[55] The proviso to s. 38(1) of the EOA provides in para. (a) that "an election petition questioning ... the election upon the ground of a corrupt practice ... or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person ... in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within 28 days immediately after the date of such payment or other act."

[56] The first respondent submits that premised on s. 38(1)(a) of the EOA, the last day to present the petition is 28 days from the alleged act committed, which is 28 days from 4 May 2013, which falls on 1 June 2013.

[57] The election petition was filed on 11 June 2013 which was 10 days overdue, hence the first respondent submitted that the petition failed to comply with the requirement of s. 38(1)(a) of the EOA.

[58] However the petitioner submitted that s. 38(1)(a) is only applicable in respect of conduct of a corrupt practice which took place after the publication of the Gazette. In the present case the said corrupt practice took place before the publication of the Gazette. Therefore it was submitted that s. 38(1)(a) is not applicable.

[59] Further it was also submitted by the petitioner that the proviso of s. 38(1) of the EOA is merely directory by the use of the word "may" as opposed to the word "shall" in s. 38(1) of the EOA. I disagree with the interpretation as suggested by the petitioner. If one is to look at the provisions of s. 38(1)(a) it is clear that for situation in para. (a) the petition is to be presented at any time within 28 days after the date of such payment or act.

[60] Nowhere does the section says that it refers to corrupt practice that took place after the publication of the Gazette. If the Legislature had intended that this section is only in relation to acts after the publication in the Gazette then it should clearly state so in the provision. This can be seen in s. 38(1)(b)(i) of EOA which expressly states " ... as respects such illegal practice, be presented within the time following at any time before the expiration of 14 days immediately after the date of the publication in the Gazette ...".

[61] On the submission by the petitioner that the word used in s. 38(1)(a) is "may" which means that it does not connote a mandatory requirement. I disagree with the submission of the petitioner in this respect. If that is the intention of Parliament, then why have the requirement of "... be presented at any time within 28 days after the date of such payment or act" at all. It defeats the purpose of specifying the time period of presentation in the section if it is not a mandatory requirement.

[62] Therefore, the requirement of compliance to s. 38(1)(a) of the EOA is mandatory, failure in which would result on the petition be struck off. Clearly in this case the petitioner failed to comply with s. 38(1) of the EOA.

Ground 6: The Petitioner Is Not I Compliance With r. 4(1)(b) And (4) EPR Because It Does Not State The Advance Voting Date

[63] The first respondent submits that the date of the holding of the election is a material fact as it comes under r. 4(1)(b) of the EPR. Rule 4(1)(b) states:

4(1) An election petition shall contain the following statements:

(a) ...

(b) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

[64] The first respondent submits that the petitioner had failed to state all the correct dates for the holding of, in particular, failed to state the advance polling date for the holding of the election. Looking at the election petition, it states in paras. 1 and 2(ii) that the election was held on 5 May 2013. The first respondent submits that this is erroneous as the election was held on both 30 April 2013 and 5 May 2013 where 30 April 2013 was the advance voting date and 5 May 2013 was the voting date. The first respondent therefore submitted that r. 4(1)(b) of the EPR had not been complied with.

[65] The first respondent further refers to the Notice to Hold a General Election to the Dewan Rakyat Gazette on 12 April 2013 *via* Government Gazette P.U.(B) 109 which states as follows:

> TAKE NOTICE that the Election Commission had issued election writs on the 11th of April to the returning officers of the Parliamentary Constituencies specified in the Schedule hereto and that the day of nomination in respect of each parliamentary Constituency shall be on the 20th April 2013 and that in the event of a contested election in any such constituencies, the advance polling day shall be on 30th April 2013 and the polling day shall be 5th May 2013.

[66] Again it was stated in the Results of Contested Election and Statements of the Poll after the Official Addition of Votes Gazette on 22 May 2013 *vide* Government Gazette P.U.(B) 218 which was as follows:

> IN ACCORDANCE with regulation 27 of the elections (Conduct of Elections) Regulations 1981 [P.U.(A) 386/1981], the candidates named in the column (1) of the First Schedule have been elected as members of the Dewan Rakyat for the constituencies specified in column (2) as a result of the advance polling day on 30 April 2013 and polling day on 5 May 2013.

[67] The first respondent submitted that when the petition did not state the advanced polling date it has caused confusion and did not represent a true picture of the impugned election. The law is such that the failure to state the dates of holding of the election is a mandatory requirement and failure to do so is fatal to the petition.

[68] In *Zulkarnaini Mohamed Noor v. Syed Omar Mohamed & Anor* [1978] 1 LNS 245; [1979] 2 MLJ 143 it was held that where the date of the election is wrongly quoted then the election is treated as non-existent. It does not matter although it is clear that there is a mistake on the part of the petitioner.

[69] In the case of *Kua Kia Soong lwn. Mohd Nor Bador & Anor* [1996] 1 CLJ 429 it was held that the petitioner is not entitled to relief where the dates of the holding of the election is wrong. In that case the petition was dismissed with costs.

[70] The first respondent cited the case of *Isahak Hamid v. Mustapha* [1965] 1 LNS 63; [1965] 2 MLJ 18 where the court held that:

> The word "election" to my mind comprises the many steps in the process whereby a candidate is returned from the issuing of the process whereby a candidate is returned from the issuing of the notification calling an election up to the declaration of the results.

[71] Hence the first respondent submitted that pursuant to the definition of the word "election" in *Isahak Hamid v. Mustapha* logically that the holding of the election includes the advance polling date.

[72] I disagree with the submission of the first respondent. I failed to say how the definition in the said case implies that the advance voting date must be stated in the petition. I also failed to see how the failure to state the said date caused confusion.

[73] There is no confusion caused by the failure to state the date of the advance election date. It is undisputed that the election date was 5 May 2013. That is definitely not advance election date.

[74] Cases like *Zulkarnaini Mohamed Noor v. Syed Omar Mohamed & Anor* and *Muip Tabib v. Dato James Wong; Wan Hamid Tuanku Surur v. Francis Loke* [1970] 1 LNS 83; [1971] 1 MLJ 246 are cases where the date of the election were wrongly stated. Definitely the effect is that the petitioners were referring to the date where the election was non-existent. Compared with our present case there is the correct statement of the election date of 5 May 2013, which is correct. Where is the confusion?

[75] My view is that the failure to state the advance election date is not fatal and does not caused confusion to the first respondent in preparing her defence.

[76] Therefore this preliminary objection is dismissed.

Ground 6A: The Petition Is Not In Compliance With rr. 4(1)(b) And 4(4) EPR In Respect Of The First Charge

[77] Rule 4(1)(b) of the EPR states that:

> An election petition shall contain the following statements:
>
> (a) ...
>
> (b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied onto sustain the prayer.

[78] Rule 4(4) provides for the form in which the petition shall be formulated stating the concise facts and grounds on which the petitioners rely.

[79] Case law authorities have established that a petition can be struck our for want of concise facts and grounds to support the alleged contravention of the election laws or charge levelled against the respondents.

[80] Election petitions are stated to be of a quasi criminal nature and hence the necessity to sufficiently substantiate the election petition. Refer to the case of *Alexander Vincent v. Adeh Denong @ Gabriel Adit Demong* [2006] 1 LNS 173; [2007] 1 MLJ 432, at p. 453 paras. F - I where the case of *Rahim Khan v. Khurshid Ahmad* [1974] MLB (Ind) 138 was quoted which stated in its judgment as follows:

A ... An election once held is not to be treated in a light - hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantiated grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one B person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold corrupt C practice alleged against the relumed candidate adduced. Indeed election. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

D **[81]** It is also established in the same case that particulars cannot substitute grounds or material facts. Particulars are not a substitute for the pleadings and facts in an election petition. Neither can particulars be used to amplify the grounds of the material facts.

E

[82] A petition under r. 4 of the EPR must associate with the complaint of the relevant provision of the election law.

[83] The petitioner alleged on his petition pursuant to the first F charge that the first respondent contravened ss. 9 and 11(1)(b) of the Election Offences Act 1954 (EOA) by exerting undue influence as specified in s. 9 of the same.

[84] If one is to look at the heading of the first charge it states:

G Responden Pertama telah melakukan perbuatan-perbuatan rasuah dan/atau perbuatan-perbuatan yang menyalahi undang-undang (Seksyen 32(c) Akta Kesalahan Pilihanraya 1954).

[85] From the formulation by the petitioner of the heading of the first charge, the petitioner is unsure whether the allegation is H corrupt practice or illegal practice by the usage of the words "dan/ atau". This leads to ambiguity in the charge and certainly will cause confusion to the first respondent in formulation of her defence.

I

[86] The effect of the usage of the word "dan/atau" also leads to multiplicity of charges which would be prejudicial to the first respondent.

[87] Secondly, there is no facts or particulars pleaded in the petition which supports the offence of illegal practice committed by the first respondent. This omission affected the petition as it violated rr. 4(1)(b) and 4(4) of the EPR.

[88] The charge of corrupt practice was grounded upon s. 32(c) of the EOA, which states that:

> 32. The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds ...:
>
> (a) ... ;
>
> (b) ... ;
>
> (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate.

[89] It is incumbent upon the petitioner to plead that the corrupt practice is "in connection with the election". The petition failed to plead that the charge was "in connection with the election". This is fatal to the petition as the words is a crucial element of the offence.

[90] Further the petition also fails to plead sufficient facts and elements of undue influence with clarity.

[91] There are five classes of offences which can be derived from s. 9(1) of the EOA as submitted by the first respondent. The classes are as follows:

(i) Every person who, before, during or after an election directly or indirectly, by himself or by any other person on his behalf, makes use or threatens to make use of any force, violence, or restraint upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election (Class 1).

(ii) Every person who, before, during or after an election directly or indirectly, inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election (Class 2).

(iii) Every person who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter (Class 3).

(iv) Every person who by abduction, duress, or any fraudulent device or contrivance thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election (Class 4).

(vi) Every person who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right (Class 5).

[92] Out of each class of offence stated above, there are numerous specific offences or variants of possible offences of undue influence.

[93] I reproduced the numerous variants or possible offences of undue influence which was submitted by the first respondent:

	Elements	Variants
	Class 1:	
When	Before, during or after an election:	3
Who	Every person who, directly or indirectly	2
	By himself or any other person on his behalf	2
Act	Makes use of or threatens to make use of	2
	Any force, violence or restraint	3
	Upon or against any person	2

	Elements	Variants
Purpose	In order to induce or compel such person	2
	To vote or refrain from voting, having voted or refrained from voting	4
	Class 2:	
When	Before, during or after an election:	3
Who	Every person who directly or indirectly	2
Act	Inflicts or threatens to inflict	2
Who	By himself or by any other person	2
Act	Any temporal or spiritual injury, damage, harm or loss	5
	Upon or against any person	2
Purpose	In order to induce or compel such person	2
	To vote or refrain from voting, having voted or refrained from voting	4
	Class 3:	
Who	Every person who	
Act	By abduction, duress or any fraudulent device or contrivance	4
Purpose	Impedes or prevents the free exercise of the franchise of any elector or voter	4
	Class 4:	
Who	Every person who	
Act	By abduction, duress or any fraudulent device or contrivance	4
	Compels, induces or prevails upon any elector or voter	6

	Elements	Variants
Purpose	To give or refrain from giving his vote	2
Who	**Class 5:** Every person who	
	Directly or indirectly	2
Act and Purpose	Interferes or attempts to interfere with the free exercise by any person of any electoral right	2

[94] The gist of the first charge alleged that the first respondent had:

(i) inflicted harm on BN's candidate, Raja Nong Chik bin Raja Zainal Abidin;

(ii) interfered or attempted to interfere with the free exercise of any electoral right of an elector or voter to vote or refrain from voting BN's candidate, Raja Nong Chik bin Raja Zainal Abidin by giving and publishing false statements ... to induce any elector or voter to give his vote to the first respondent or to induce any elector or voter to refrain from giving his vote to Raja Nong Chik bin Raja Zainal Abidin, an offence under one of the classes in s. 9(1) of the EOA.

[95] I agree with the submission of the first respondent that the petitioner in drafting the charge against the first respondent, had:

(i) mixed and conjoined the various elements of the offences in classes 2, 4 and 5 in the first charge of the various offences permutated in s. 9 together;

(ii) no precise class of offence had been pleaded and identified the various classes of offences in the first charge. This resulted in the first respondent being prejudiced as the first respondent would not know the precise class of offence that she is being charged with by the petitioner.

[96] In the case of *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26 Bangi & Ors and Other Petitions* [2005] 5 CLJ 349; [2005] 2 MLJ 149 of EOA whereby in the judgment it is stated that: A

> It is incumbent upon the petitioner to identify the relevant class and specific offences within that class that he alleges the respondent has committed. He must then furnish relevant material facts and particulars to make out the specific charge against the respondents so that he is not embarrassed and/or prejudiced. B

[97] Therefore the mixing of and conjoining of the offences under s. 9 together caused confusion which leads to ambiguity, as there are so many variants to the offence of undue influence under s. 9. C

[98] As a result of the mixing and conjoining of the offences the petitioner failed to state the specific offence in the first charge which constitutes a non-compliance of r. 4(1)(b) of the EPR. D

[99] Even if assuming for a moment, that the petitioner did plead the specific offences, the petition is still defective as the repetitive usage of the word "atau" indicates that the petitioner cannot made up his mind as to which of the offences (ie, whether it be corrupt practice or illegal practice) and the elements thereof were alleged against the first respondent. E

[100] The usage of the word "atau" renders the charge bad for duplicity as the first respondent would be grossly prejudiced in preparing her defence. F

[101] The petitioner also failed to plead sufficient facts and particulars in support to the alleged false statement allegedly given and published by the first respondent. G

[102] It was alleged by the petitioner that the first respondent had given and published the statement which read as "DATO RAJA NONG CHIK ZAINAL ABIDIN'S INVOLVEMENT IN THE TRANSFER OF 12 ACRES OF BUKIT KIARA LAND FROM DEWAN BANDARAYA KUALA LUMPUR (DBKL) TO A NOMINEE COMPANY FOR ONWARD SALE TO A MAJOR PROPERTY DEVELOPMENT COMPANY FOR CLOSE TO 475 MILLION". H I

[103] However, there is no facts to state the material facts as to the place, the time and how the statement was allegedly disseminated.

[104] It also failed to disclose how and why it had unduly influenced the decision of the voter in giving his vote in the election. There is no facts or information in "fakta-fakta" or "butir-butir" on how the alleged statement had the effect of unduly influencing the voters to give his vote or refrain from giving his vote in the said election.

[105] There is also no facts to state how and why the first respondent's alleged statement amounted to undue influence under s. 9 of the EOA.

[106] It is also observed that from the pleadings of the petition the facts and particulars do not constitute the elements under s. 9(1) of the EOA.

[107] The first charge stated that the purpose of the first respondent's alleged statement was "... bagi mendorong mana-mana pemilih atau pengundi untuk memberikan undi kepada responden pertama dan mendorong mana-mana pemilih atau pengundi untuk tidak memberikan undi kepada Raja Nong Chik bin Raja Zainal Abidin ...".

[108] It is to be observed that the elements under s. 9(1) of the EOA are:

> ... or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

[109] Clearly, the petitioner had misunderstood the element that is required under s. 9(1) of the EOA. The statement must be towards giving or refraining from giving votes at an election *per se* not towards any candidate, as drafted by the petitioner.

[110] Therefore the failure of the petitioner to plead the purpose of the inducement was for the voter to give or refrain from giving his vote in any election is fatal to the petition of the petitioner.

[111] It is pertinent to note that the essence of the offence of undue influence under s. 9 of the EOA is the infliction of fear and injury, whether of a temporal or spiritual in nature.

[112] I agree with the first respondent's submission that the first respondent's alleged false statement does not disclose an offence under s. 9 of the EOA as it does not state that it inflict fear or injury, whether of a temporal or spiritual in nature.

[113] The allegation of making of false statement, even if this allegation is true, do not fall within the offence section of s. 9 of the EOA.

[114] The petitioner also failed to state the nexus between the first respondent's alleged statement, article Malaysiakini 1 and article Malaysiakini 2.

[115] The petitioner asserted that the first respondent's alleged statement was published and circulated *via* article Malaysiakini 1 and article Malaysiakini 2 which subsequently have induced voters to give their vote to the first respondent.

[116] The basis of the petition herein is the first respondent's alleged statement, the article Malaysiakini 1 and the article Malaysiakini 2. From the petition the petitioner has not pleaded specifically which amongst the three (ie, whether it is the alleged statement or the article Malaysiakini 1 or the article Malaysiakini 2) that the petitioner is relying upon in view of the fact that a perusal of the paras. 3, 3(ii), 3(vi) and 3(viii) of the petition show the alleged statements/articles have different contents and imputations.

[117] In addition the petitioner did not state the precise statement that is the subject of the complaint, ie, whether the titles of the articles complained of or if the entire articles are being complained of. Apart from this, the petitioner also failed to state whether all the articles or one of the three articles or two or all three. The mixing of all the charges has caused confusion and much ambiguity which is fatal to the petition.

[118] The petitioner also failed to plead which statement (out of the alleged statement, the article in Malaysiakini and the article Malaysiakini 2) that had unduly influenced the decision of the voters.

[119] The petitioner also failed to plead the particulars of the voters who were purportedly induced by the first respondent as a result of the publication of the alleged statement, the article in Malaysiakini and the article Malaysiakini 2, to vote/not to vote, or whether the petitioner was unduly influenced to vote for the first respondent and not to give his vote to Raja Nong Chik bin Raja Zainal Abidin.

[120] It is also a requirement to state in the petition, how the alleged statement, the article in Malaysiakini 1 and the article in Malaysiakini 2 had affected the result of the election.

[121] All the above mentioned on the failures of the petitioner to plead adequate facts to support its allegation and charges renders the petition defective and ought to be struck off, as it failed to comply with rr. 4(1)(b) and 4(4) of the EPR.

Ground 6B: The Petition Is Not In Compliance With rr. 4(1)(b) And 4(4) Of The EPR In Respect Of The Second Charge

[122] The heading of the second charge reads:

> Responden Pertama telah melakukan satu perbuatan rasuah dan/ atau perbuatan yang menyalahi undang-undang (seksyen 32(c) Akta Kesalahan Pilihanraya 1954)

[123] The usage of the word "dan/atau" renders the charge ambiguous. Clearly the petitioner is again unsure as to what is the offence that the petitioner alleged the first respondent is responsible for, whether it is corrupt practice or illegal practice.

[124] The effect of drafting the charges this way would caused prejudiced to the first respondent in preparing her defence as she is unsure what is the charge levelled against her. This amounts to duplicity and is bad in law.

[125] Further, even if the usage of the word "and/or" is proper (which in this case it is not), the petitioner failed to plead any facts or particulars which supports the offence of any illegal practice allegedly committed by the first respondent.

[126] The petitioner also failed to plead that the charge was "in connection with the election", as this is a requirement for allegation. Nowhere in the petition did the petitioner state that the alleged statement was published by the first respondent. This

amounts to improper particularisation, which renders the petition to be struck off. (Refer to *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26 Bangi & Ors and Other Petitions* [2005] 5 CLJ 349; [2005] 2 MLJ 149).

[127] There is no facts pleaded specifically on the elements of corrupt practice for the charge under s. 11(1)(d) of the EOA.

[128] The petitioner also failed to plead the specific offence under s. 11(1)(d) of the EOA. It is unclear whether the petitioner is alleging a false statement which was made or published by the first respondent, and whether it was in relation to the personal character or conduct of Raja Nong Chik.

[129] Paragraph 5 of the petition stated s. 11(1)(d) of the Election Offences Act 1954 without specifically stating the offence that he is relying on. There are numerous variants to the offence relating to a purported false statement of fact regarding the personal character or conduct of such candidate. This was tabulated at para. 149 of the first respondent's submission.

[130] Under "butir-butir and fakta-fakta", for the offence under s. 11(1)(d) of the EOA, there is nothing pleaded on the facts that the publication of the alleged statement which relates to facts about the character or conduct of Raja Nong Chik.

[131] The use of the word "dan/atau" shows that the petitioner is unsure of the classes of offences that the first respondent had allegedly committed.

[132] The petitioner also failed to plead the essential elements relied on by the petitioner for the charge under s. 32(c) of the EOA. There is no ground stated by the petitioner to support the offence alleged ie, whether it was corrupt practice or illegal practice.

[133] Such failure is fatal to the petition and is liable to be struck out.

[134] The petitioner also failed to plead particulars such as the place, time and how the first respondent made the alleged statement.

[135] There is also no nexus stated between the alleged statement, article Malaysiakini 1 and the article Malaysiakini 2. The pleading under para. 5 does not correlate with any of the particulars under the heading of "butir-butir" and *vice versa*.

[136] The petitioner failed to plead any nexus between the statement allegedly made by the first respondent, and the published article Malaysiakini 1 and the published article Malaysiakini 2 referred to in the petition.

[137] The petitioner did not plead whether he is relying on all (the alleged statement, published article Malaysiakini 1 and the published article Malaysiakini 2) or if only one or only two. This is because the three statements/articles has different contents and connotations.

[138] There is also the failure to plead the precise statement that is the subject of the complaint (ie, whether the alleged statement or the published article Malaysiakini 1 or the published article Malaysiakini 2). In the event that the petitioner is relying on all three, then the petitioner should have placed the separate statements and articles into three separate charges rather than lumped them into one.

[139] The petitioner also failed to plead the reasons and particulars why the alleged statement is false. This is lacking in particulars which is detrimental to the petition.

[140] The petitioner also failed to state which part of the alleged statement of articles are allegedly false. This greatly prejudiced the first respondent as the first respondent would not know what is the precise charge made against her.

[141] There is also the failure on the part of the petitioner to state how the alleged statement had influenced the result of the election.

[142] Further the petition failed to state in its facts how did Rosli bin Mohamad (the petitioner herein) was affected by the alleged false statement by the first respondent.

[143] The petitioner also failed to state specifically the alleged statement in the facts. There is nothing stated which part of the alleged statement by the first respondent are false statements.

[144] It is difficult for the first respondents to defend the charges.

[145] The petitioner also failed to plead the words in the alleged statement that affected the return of Raja Nong Chik.

Ground 6C: This Is In Relation To The Fourth Charge Which Has Been Withdrawn

Ground 6D: This Is In Relation To The Fourth Charge Which Has Been Withdrawn

Ground 7: The Petition Is Not In Compliance With r. 4(2) EPR In Respect Of The First And The Second Charge

[146] Rule 4(2) of the EPR states that:

> (2) The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court or a Judge.

[147] This regulation specifically state that every distinct subject of the complaint shall be divided into separate distinct paragraphs. As stated in the case of *Alexander Vincent* that:

> In the manner each of the charges has been formulated, it does appear tenable the submission of the respondent's counsel, that the allegation here (presumably in the instant case) one charge must have the facts that constitute one charge only ...

[148] From the first and the second charge it seems to have run foul of r. 4(2) of the EPR, when the first charge and the second charge in the petition appears to plead reliance on the first respondent's alleged statement, article of Malaysiakini 1, article Malaysiakini 2 which was lumped all together against the first respondent. Each (ie, alleged statement, article of Malaysiakini 1 and article Malaysiakini 2) are different from each other and have different connotation from each other. They should have been put

into separate distinct paragraphs forming into three separate charges for each (ie, alleged statement, article of Malaysiakini 1 and article Malaysiakini 2).

Ground 8: The Election Petition Pleaded A Relief Which Has Been Repealed Under s. 35 Of The EOA

[149] From para. 15(c) of the petition, the petitioner prayed for a declaration from the court that Raja Nong Chik bin Raja Zainal Abidin was duly elected and ought to have been returned.

[150] Section 35 of the EOA provides the only relief permitted under the EOA upon determination of the EP.

[151] Section 35 of the EOA provides that:

> 35. Relief which may be claimed
>
> All of any of the following reliefs to which the petitioner may be entitled may be claimed in the election petition:
>
> (a) a declaration that the election is void;
>
> (b) a declaration that the person was no elected or ought not to have been returned;
>
> (c) (deleted);
>
> (d) where the seat is claimed for an unsuccessful candidate on the round that he had a majority of lawful votes, a scrutiny.

[152] The election petition judge can no longer declare another candidate to be the winner of the seat.

[153] Hence the prayer sought by the petitioner cannot be sustained and is bad in law.

Ground 9: No Reasonable Cause Of Action And The Petition Is Frivolous, Vexatious And Abuse Of Process

[154] Election petition are such that it relies heavily on election laws. The petitioner fails to plead sufficient facts to support the alleged contravention of the provisions of Elections (Conduct of Elections) Regulations 1981, EOA or of the alleged corrupt practice.

[155] Therefore the petitioner fail to plead material facts to show that there is a cause of action against the first respondent.

Conclusion

[156] Premised on the above, the application by the first respondent in encl. 14 is allowed with costs of RM40,000. The election petition is struck off.